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No. 04-1186

IN THE
Supreme Court of the United States

WACHOVIA BANK, NATIONAL ASSOCIATION,
Petitioner,

v.

DANIEL G. SCHMIDT III, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF *AMICUS CURIAE* OF JPMORGAN CHASE BANK, N.A. IN SUPPORT OF PETITIONER

JULIE LEPRI
BRADLEY J. JOHNSON
JPMORGAN CHASE BANK, N.A.
LEGAL DEPARTMENT
10 South Dearborn
11th Floor
Chicago, IL 60603-2003
(312) 732-7354

CARTER G. PHILLIPS*
ERIC A. SHUMSKY
DAVID S. PETRON
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Amicus Curiae

* Counsel of Record

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QUESTION PRESENTED

Whether, for purposes of federal diversity jurisdiction, a national banking association is "located" in, and thus deemed to be a citizen of, every state in which the association merely maintains a branch.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae JPMorgan Chase Bank, N.A. ("Chase"), is a national bank organized under the laws of the United States, and currently it has branch operations in 18 States. It therefore has a substantial interest in the issue presented here, because this Court's interpretation of 28 U.S.C. § 1348 will determine Chase's citizenship for diversity purposes—and therefore its access to the federal courts—in cases around the country. Indeed, Chase prevailed on the very issue presented here in a recent Fifth Circuit decision that formed part of the circuit split identified in Wachovia's petition. See *Horton* v. *Bank One, N.A.*, 387 F.3d 426 (5th Cir. 2004).[2] A petition for certiorari in *Horton* is currently pending before this Court, apparently awaiting the outcome of this case. See 73 U.S.L.W. 3463 (U.S. Jan. 3, 2005) (No. 04-989). The holding of the Fourth Circuit in this case purports to overturn an understanding of national bank citizenship that is more than 100 years old, and thereby to deprive national banks of access to federal courts in situations where the purpose of diversity jurisdiction to prevent geographic bias would clearly be served. Chase's experience and perspective should assist the Court in interpreting 28 U.S.C. § 1348.

BACKGROUND AND SUMMARY OF ARGUMENT

1. The citizenship of national banks for purposes of diversity jurisdiction is defined by 28 U.S.C. § 1348, which provides that national banks are "deemed citizens of the States in

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that counsel for *amicus* authored this brief in its entirety. No person or entity other than *amicus* and its counsel made a monetary contribution to its preparation or submission. Letters of consent from all parties have been filed with the Clerk of the Court.

[2] The party listed in the Fifth Circuit case is Bank One, N.A. (not JPMorgan Chase Bank, N.A.), because that case was commenced prior to the merger of Bank One, N.A. into JPMorgan Chase Bank, N.A.

which they are respectively located." The beginning and end of this case is the definition of the term "located"—namely, whether a national bank is "located" for jurisdictional purposes in each and every State where it has a branch. If the Fifth Circuit's interpretation in *Bank One* is correct (as Chase believes), then federal diversity jurisdiction remains generally available to national banks, just as it is for state banks and for corporations. If the Fourth Circuit's interpretation in this case is adopted, and a bank is "located" for jurisdictional purposes "wherever it has physical presence," then diversity is largely destroyed for national banks with multiple branches (and possibly even ATMs and processing centers as well, under the Fourth Circuit's broad language). See *Wachovia Bank, N.A.* v. *Schmidt*, 388 F.3d 414, 417 (4th Cir. 2004). Accordingly, the federal courts would be substantially shuttered to national banks, a result that would stand in stark contrast to the situation confronting state banks and corporations.

There are multiple tools for analyzing the meaning of the term "located" used in § 1348—historical analysis, legislative history, statutory purpose—and Wachovia's principal brief demonstrates that using each of those modes of analysis supports the conclusion that the term "located" in § 1348 does not refer to the places where national banks merely have branch offices. This brief, however, focuses on an important aspect of this case that has been largely neglected in the lower courts—*viz.*, a close textual analysis of the term "located." This oversight is curious because under the usual meaning of the term, a national bank is not "located" in every State where it has a branch, and certainly does not *unambiguously* have this meaning, as the court below mistakenly held.

2. The cardinal rule of statutory interpretation is that words must be given their ordinary and natural meaning. Here, the text at issue is the word "located," and the most common meaning of that term is a limiting one; contrary to what the Fourth Circuit held, it cannot comprise numerous and scattered places in this context. This meaning is set forth in dictionaries that are contemporaneous with the original, 19th-century enactment of § 1348's precursor. It likewise finds support in dictionaries that are contemporaneous with the enactment of § 1348, as well as current dictionaries. And, in every era, both legal and non-legal dictionaries point to this same result.

This understanding of the term "located" is confirmed by common usage, and by similar uses of the term in other statutes. In common parlance, a complex corporate entity—whether a national bank, state bank, or a corporation—is not understood to be "located" at every place where it happens to ca..y on its business. The Fourth Circuit's contrary conclusion confuses the subsidiary parts of a corporate enterprise with the entity writ large. To be sure, it makes sense to talk about where a branch "is located," but that is quite beside the point here—general references to the location of the larger entity mean something else.

3. These modes of textual analysis are confirmed by one critical aspect of the history of § 1348 and its predecessor provisions concerning national bank jurisdiction. From the inception of national banks until relatively recently, national banks could *only* have branches in a single State. Thus, when the jurisdictional term "located" first was enacted, there was *no* interstate branch banking for national banks.[3] Accordingly, for more than 100 years, in this context the term "located" could not possibly have referred to myriad locations. What is more, over the course of numerous amendments and recodifications of the federal banking laws, Congress never stated any intent to alter the historical meaning of this term.

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[3] Under rare circumstances, a national bank that converted its charter from a state bank was permitted to operate interstate branches. *See* Wachovia Br. at 28 n.14 (discussing this rarely invoked grandfathering provision).

ARGUMENT

I. THE TERM "LOCATED" IN § 1348 DOES NOT REFER TO EVERY STATE WHERE A NATIONAL BANK MAINTAINS A BRANCH.

Statutory interpretation begins with the text of the statute. *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999). When, as here, a term has no statutory definition, its "'ordinary or natural meaning'" governs. *Leocal* v. *Ashcroft*, 125 S. Ct. 377, 382 (2005); *FDIC* v. *Meyer*, 510 U.S. 471, 476 (1994). The most common understanding of the term "located" does not, as the Fourth Circuit erroneously held, admit of a multiplicity of locations. This is all the more so when one refers to the whole of a corporate entity with many branches—although its *branches* may be "located" around the nation or the world, the *corporate entity* is not. This usage of the term "located" applies equally to national banks, as evidenced by numerous dictionary definitions, common usage and similar statutes.

Obviously, statutory interpretation is a holistic enterprise, and undue focus on dictionary definitions can be methodologically flawed. That general rule certainly holds true here, where this Court and the Office of the Comptroller of the Currency both have recognized that the term "located" as used in the banking statutes is context-dependent. See *Citizens & Southern Nat'l Bank* v. *Bougas*, 434 U.S. 35, 43-44 (1977) (interpreting "located" in 12 U.S.C. § 94 in light of venue-specific concerns); *Marquette Nat'l Bank of Minneapolis* v. *First of Omaha Serv. Corp.*, 439 U.S. 299, 309-13 & n.21 (1978) (interpreting "located" in 12 U.S.C. § 85); 12 U.S.C. § 1811 note (governing the interpretation of 12 U.S.C. § 85, which contains the term "located").[4] Chase understands

[4] *See also* H.R. Conf. Rep. No. 103-651, at 63 (1994) (discussing § 1811); 140 Cong. Rec. S12788, 12790 (daily ed. Sept. 13, 1994) (statement of Sen. Roth) (same); *see also* Office of the Comptroller of the Currency, Interpretive Letter No. 782, at 4-6 (June 1997) (interpreting 12 U.S.C. § 85), *available at* http://www.occ.treas.gov/interp/jun97/int782.pdf

and agrees with this. But Chase disagrees with a fundamental point in the analysis of the court below—the notion that reliance on dictionary definitions unambiguously supports reading § 1348 to preclude diversity jurisdiction if a national bank maintains a branch in the same State as another party. That premise is flatly contradicted by a more rigorous review of those sources. Accordingly, Chase's attention to this particular problem of statutory construction is intended simply to complement Wachovia's broader themes. Chase embraces those arguments concerning structure, history and purpose, but there is no point in parroting arguments effectively and fully made elsewhere.

A. Dictionaries Support This Conclusion.

In the absence of a statutory definition—and there is none here—this Court looks to dictionary definitions to interpret a statutory term. *E.g.*, *MCI Telecomms. Corp.* v. *AT&T Co.*, 512 U.S. 218, 225 (1994); see 2A Norman J. Singer, *Sutherland on Statutes and Statutory Construction* § 47:07, at 56 (6th ed. Supp. 2005); 2A *id.* § 47:27, at 338 (6th ed. 2000). Dictionaries are virtually unanimous in defining the term "located" (as well as the related terms "locate" and "location") in terms of a limited number of places. This unanimity of definition extends to legal and lay dictionaries, both modern and those contemporary with the enactment of § 1348 and each of its predecessors. This understanding defeats the Fourth Circuit's "multiplicity of locations" rationale.

The time of a statute's enactment is "the most relevant time for determining a statutory term's meaning," *MCI*, 512 U.S. at 228; *Perrin* v. *United States*, 444 U.S. 37, 42-45 (1979), and so we begin with dictionaries from the late 19th century, when the term "located" appeared in a precursor statute to § 1348. See Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 552, 554-55. The 1864 edition of Webster's Dictionary, for in-

stance, defines the term "locate" as "To place; to set in a particular spot or position." *Dictionary of the English Language* 783 (1864). This definition—like many of the definitions in subsequent dictionaries—is notable for its designation of a "particular" place. There is no hint in this definition that, as the Fourth Circuit held, a single entity could be located in numerous and widespread places. Likewise, the 1860 dictionary by Joseph Emerson Worcester—Noah Webster's chief competitor—defined the term "locate" in limited fashion: "To designate and determine *the* place of." *Dictionary of the English Language* 850 (1860) (emphasis added). Dictionaries from the 1880s employed the same formulation. See *Webster's International Dictionary of the English Language* 864 (1890) ("[t]o place; to set in a particular spot or position"); *Black's Law Dictionary* 730 (1891) ("To ascertain and fix the position of something, the place of which was before uncertain or not manifest; as to locate the calls in a deed.").

These definitions' use of the term "particular"—which recurs in the later dictionary definitions cited *infra*—is a complete answer to the Fourth Circuit's mistaken conclusion that the statutory text unambiguously means that a national bank is located "wherever it has physical presence." *Wachovia*, 388 F.3d at 417. That court reasoned that an entity may have any number of "'particular or specific location[s],'" *id.* at 417-18—an oxymoron that is flatly contrary to the meaning of the word "particular." Compare *id.* (reasoning that definitions employing the term "particular" "do not include any requirement that the 'particular or specific location' be *unique* or exclude *other* distinct locations"), with *Webster's Third New International Dictionary* 1646 (1993) (defining "particular" as "of, relating to, or being a single definite person or thing as distinguished from some or all others.").

These historical definitions are particularly important because when the National Bank Act was enacted, a national bank could not engage in branch banking. See *infra* Part II. In short, the term "located" in historical context could not

have embraced a multitude of locales. That historical meaning is mirrored and reinforced by dictionaries that were contemporaneous with the 1911 and 1927 banking enactments, and which likewise defined the term "locate" with regard to particularity of place. See *Black's Law Dictionary* 735 (2d ed. 1910) ("To ascertain and fix the position of something, the place of which was before uncertain or not manifest; as to locate the calls in a deed."); see also *Black's Law Dictionary* 1127 (3d ed. 1933) (same); *Webster's New International Dictionary* 1449 (2d ed. 1934) ("[t]o set or establish in a particular spot or position").

The next definitional milestone comes in the middle of the 20th century. Section 1348 was codified in 1948, and during that precise period, the Fourth Edition of *Black's Law Dictionary* defined the term "located" with explicit reference to banks, in a fashion that is directly applicable here: "A bank is 'located' in the place specified in its organization certificate." *Black's Law Dictionary* 1088 (4th ed. 1951). This same definition was carried over to the revised Fourth Edition, published in 1968. See *Black's Law Dictionary* 1088 (rev. 4th ed. 1968). Indeed, this was not just *a* definition of the term; it was *the principal* definition.

The court below ignored these definitions of "located." Indeed, its methodology in reviewing dictionaries seems to have been quite selective. Although it employed the Revised Fourth Edition of *Black's Law Dictionary*, the Fourth Circuit instead selected a less favorable definition from that same edition. *Wachovia*, 388 F.3d at 417. Similarly, in looking to the Sixth Edition of *Black's Law Dictionary*, it ignored the definitions conveying particularity that have been a mainstay of editions past and since, see *Black's Law Dictionary* 939 (6th ed. 1990) (defining "locate" as "To ascertain and fix the position of something, the place of which was before uncertain or not manifest, as to locate the calls in a deed."); *Black's Law Dictionary* 847 (5th ed. 1979) (same), and instead selected an outlier definition that appeared in *Black's* only for a

short period, *see Wachovia*, 388 F.3d at 417. This Court has previously criticized selective reliance upon an "out-of-step dictionary" definition. *MCI*, 512 U.S. at 227.

Finally, even if these historical definitions were insufficient to demonstrate the longstanding meaning of the term "located" as not being linked to a multiplicity of locales, modern dictionaries confirm this meaning. *Webster's Third New International Dictionary*, for example, defines "locate" as "to set or establish in a particular spot or position." *Id.* at 1327 (1993). See also, *e.g.*, *American Heritage Dictionary* 496 (4th ed. 2001) ("[t]o determine *the* position of" or "[t]o place; situate" (emphasis added)); 8 *Oxford English Dictionary* 1081 (2d ed. 1989) ("To appoint the place or situation of (the lands referred to in a grant); to fix the site of (a building, etc.)"). Current legal dictionaries define "location" likewise. See *Black's Law Dictionary* 958 (8th ed. 2004) ("The specific place or position of a person or thing."); *Black's Law Dictionary* 951 (7th ed. 1999) (same).

This evidence is overwhelming. Historical dictionaries contemporaneous with each significant jurisdictional enactment, as well as the best lexicographical scholarship to date, all agree that the ordinary meaning of "located" does not embrace myriad locations. The suggestion by the court below that this term unambiguously means the opposite should be rejected.

B. The Common Usage Of "Located" Supports This Conclusion.

"'Ordinary'" and "'natural'" usage, *Leocal*, 125 S. Ct. at 382; *Meyer*, 510 U.S. at 476, confirms what the dictionary definitions set forth above show: In standard American English, an entity such as a national bank ordinarily is not understood to be "located" in numerous places (unless, of course, a specific context demands otherwise, see *supra* at 4-5 & n.4). Take, for instance, the example of a corporation. If asked "Where is Ford located?," the common answer would be

"Michigan," not every place that happens to be home to a Ford dealership. Other similar entities are likewise understood to be "located" at their headquarters sites. The Seventh Circuit recognized precisely this usage, in a thoughtful explanation that bears repeating in full:

> In the context of jurisdiction, use of the word 'located' in discussing a corporation likely refers to the state where the principal place of business is located or perhaps where the company is incorporated. That is, if in the course of discussing jurisdictional motions a federal judge asks a lawyer representing a corporation 'where is your client located?,' the judge likely expects to hear the lawyer respond by naming the state containing the corporation's principal place of business and probably the state of incorporation as well. The judge does not expect for the lawyer to rattle off every state where the corporation has facilities or a presence.

Firstar Bank, N.A. v. *Faul*, 253 F.3d 982, 987 (7th Cir. 2001). And, that court went on to recognize, "a national bank appears to be analogous in most respects to a corporation" for these purposes. *Id.* at 988.

It is critical in this context to distinguish between the location of the larger corporate entity (Ford or Wachovia) and the location of a sub-unit of the larger entity (a Ford dealership, or a Wachovia bank branch). Of course, it is not unreasonable to ask where a particular sub-unit, such as a bank branch, is "located." But § 1348 does not concern itself with sub-units of national banks. Rather, it unquestionably refers to the location of the national bank itself. The statute refers to "***national banking associations***," and it is these banking associations considered "respectively" in their entirety—and ***not their individual branches***—that are "deemed citizens of the States in which they are respectively located." 28 U.S.C. § 1348 (emphasis added).

The court below failed to recognize this distinction between the location of the larger entity and the location of the entity's subsidiary units. In the course of concluding that the word "located" encompasses bank branches, that court reasoned that "the word 'located' unambiguously includes branch offices, because branch offices plainly have a 'specific place or position,' are clearly located in a 'particular spot or position,' and are certainly 'fixed or established in a site or place.'" *Wachovia*, 388 F.3d at 418 (quoting dictionary definitions of the terms "locate" and "location"). This is the right answer to the wrong question. *Of course* a branch office can be "located" somewhere, and *of course* a branch office has a "'specific place or position'" and a "'particular spot or position.'" But, this is quite beside the point, because § 1348 does not concern itself with where branch offices are located; it defines where the larger entity—the national banking association—is located.[5]

* * * *

The meaning of "located" in the context of § 1348 plainly does not embrace every State where a branch operates. The Fourth Circuit's contrary conclusion fails to do business with the array of dictionary definitions of "located" and with the common usage of the term. In sum, the most common usage

[5] The Fourth Circuit's other primary counterexample likewise provides no support for the notion that a single corporate entity is "located" in numerous places. The court reasoned that "it would be odd to restrict ["locate"]'s application to a *unique* site .... A tract of land that stretches across the border of North and South Carolina is 'located' in *both* states, not just North Carolina." 388 F.3d at 418. This hypothetical presupposes a single tract of land in a single unified place, and therefore sheds no light on the very different question of a corporate entity and its subparts. The fact that the hypothetical "tract of land" straddles a state line does not mean that it has multiple locations—it simply means that the single location happens to cross a state border. *Cf.* 28 U.S.C. §§ 83(b)(1), 124(c)(5) (characterizing the Texarkana courthouse as being "located astride the State line between Texas and Arkansas.")

of "located" does not, as the court below held, refer to numerous and far-flung places.

II. AT THE TIME OF ITS ENACTMENT AND FOR MORE THAN A CENTURY THEREAFTER, THE TERM "LOCATED" HAS NOT, IN THE CONTEXT OF JURISDICTION, REFERRED TO NUMEROUS PLACES.

The interpretation of the term "located" set forth above is confirmed by one crucial aspect of the history of national banking: From the first national banking law until relatively recently, national banks were not permitted to engage in interstate branch banking, and hence a national bank could not be "located" in multiple States. That is to say, for over 100 years, the term "located" in the jurisdictional context could only have meant that a national bank was a citizen of but one State for purposes of diversity jurisdiction. This historical fact is of surpassing importance in interpreting the statute, for it demonstrates beyond question that, at the time of its original enactment, the statutory term's meaning could not have been the one adopted by the court below. This interpretation is confirmed by the fact that Congress repeatedly reenacted the same statutory term, with no indication that it was changing the statute's meaning. After such a lengthy period of established meaning—confirmed by judicial interpretation—Congress would have to act clearly if it intended fundamentally to alter the meaning of the well-defined term. It did not.

1. The term "located" appears in the National Banking Act in the jurisdictional context in 1887, in language that closely resembles § 1348:

> That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively *located*; and in such cases the circuit and district courts shall not have jurisdiction

other than such as they would have in cases between individual citizens of the same State.

Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. at 554-55 (emphasis added). The 1887 statute was "similar in its terms" to an 1882 statute, see *Ex parte Jones*, 164 U.S. 691, 693 (1897), in which Congress "put national banks on the same footing as the banks of the state where they [a]re located," *Leather Mfrs.' Nat'l Bank* v. *Cooper*, 120 U.S. 778, 780 (1887); see Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163.* Specifically, where previously there had been general federal question jurisdiction over national banks because they were organized under federal law, now there would be diversity jurisdiction, just as there was for corporations and individuals. See *Petri* v. *Commercial Nat'l Bank of Chi.*, 142 U.S. 644, 650-51 (1892).

At the time the 1887 statute was enacted, it was plain that a bank was "located" in a single place because at that time, "[n]ational banks were required to operate out of a single office; they were not allowed to branch." Mark D. Rollinger, *Interstate Banking and Branching Under the Riegle-Neal Act of 1994*, 33 Harv. J. on Legis. 183, 189 (1996); see also *Bougas*, 434 U.S. 35 at 43 (explaining that national banks could not even engage in *intra*state branch banking until 1927). In short, there can have been no doubt in 1887 that a national bank was "located" in the State in which it was organized and carried on its business.

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* The text of the 1882 Act provided as follows:

> [T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun . . . .

22 Stat. at 163.

That indisputable meaning is, of course, an essential and illuminating guide to the meaning of the current statute. "It is established practice in American legal processes to consider relevant information concerning the historical background of enactment in making decisions about how a statute is to be construed ...." 2A *Sutherland on Statutes and Statutory Construction* § 48:03, at 422 (6th ed. 2000); see also *id.* at 427-28 ("The legal history of a statute, including prior statutes on the same subject, is a valuable guide for determining what object an act is supposed to achieve."). Against the backdrop of that unambiguous and settled meaning, there is a strong presumption that the term has not been fundamentally altered unless Congress expressly and directly does so. See *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress ... does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000). Congress took no such action.

2. On the contrary, at no point in the intervening years has Congress expressed its intent to expand the term "located" (in the context of diversity jurisdiction) to cover all branch offices. Congress routinely revisits jurisdictional issues, including this one. It has had ample opportunity to redefine the term "located" in the context of national bank jurisdiction, and consistently has declined to do so. Notable enactments concerning federal jurisdiction over national banks occurred in 1927, 1933, 1948 and 1994. In each instance, it remained clear that the term "located" does not refer to branches in different States, a fact that is highly significant. See 2B *Sutherland on Statutes and Statutory Construction* § 49:03, at 14-15 (6th ed. 2000) ("Long-continued contemporaneous and practical interpretation of a statute .... constitutes an invaluable aid in determining the meaning of a doubtful statute."). Over and again, courts confirmed this meaning, and these judicial interpretations were ratified by subsequent congressional enact-

ments. See *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well."); *Cottage Sav. Ass'n* v. *Commissioner*, 499 U.S. 554, 562 (1991) (same).

The codification of 1911, for instance, employed language nearly identical to the 1887 Act, and did not alter the use of "located" for purposes of diversity jurisdiction.[7] There is no hint that Congress intended to change the settled understanding of the term "located"; on the contrary, national banks still had no authority to operate bank branches, see *First Nat'l Bank in St. Louis* v. *Missouri*, 263 U.S. 640, 658 (1924), and it therefore remained clear that a national bank was "a citizen of *the* State in which it was located," *Continental Nat'l Bank of Memphis* v. *Buford*, 191 U.S. 119, 124 (1903) (emphasis added). The McFadden Act, passed in 1927, for the first time authorized national banks to operate branch offices (although only within their city of residence and to the extent authorized by state law), but it likewise took no steps to alter the jurisdictional understanding of where a national bank is "located." Act of Feb. 25, 1927, ch. 191 § 7, 44 Stat. 1224, 1228-29. Similarly, the Glass-Steagall Act in 1933 permitted national banks to operate branches throughout a State, but only within that single State (and, again, to the extent authorized by state law). Act of June 16, 1933, ch. 89, § 23, 48 Stat. 162, 189-90; see H. Rodgin Cohen, *Interstate Banking: Myth and Reality*, 18 Loy. L.A. L. Rev. 965, 967 (1985) (describing the Act). There was no indication that a national bank was "located" for jurisdictional purposes everywhere it had a branch,

[7] "[A]ll national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located." Act of Mar. 3, 1911, ch. 231, § 24(16), 36 Stat. 1087, 1093.

and Congress's repeated amendments to these jurisdictional provisions did nothing to change that well established meaning. See *Cope* v. *Anderson*, 331 U.S. 461, 467 (1947) ("For jurisdictional purposes, a national bank is a 'citizen' of *the* state in which it is established or located, and in that district alone can it be sued.") (emphasis added; citation omitted).

Indeed, down to the present, Congress has given no indication that it intends to disturb the settled jurisdictional understanding of the term "located" that has prevailed for over a century. Congress made no such suggestion when it enacted the current version of the jurisdictional statute, § 1348, in 1948. Nor did Congress so suggest in 1994, when it first permitted national banks to engage in widespread interstate branch banking. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338. This, of course, would have been the obvious opportunity for Congress to indicate its intent to abrogate the longstanding meaning of the term "located" in the jurisdictional context, were that Congress's intent, because the Riegle-Neal Act represented the first time that national banks could widely be characterized as "located" in more than one State. (Indeed, Congress did address the meaning of that term at that time in other contexts. See *supra* at 4-5 & n.4.) But by 1994, the jurisdictional meaning of "located" had long been fixed, and Congress made no effort to change that meaning. Accordingly, the longstanding historical meaning of the term "located"—which also is the best interpretation of that text—remains in place. *American Trucking Ass'ns*, 531 U.S. at 468; *Brown & Williamson*, 529 U.S. at 160; *Cottage Sav. Ass'n*, 499 U.S. at 562.

3. This Court's decision in *Bougas*, and Congress's reaction to it, confirm that the term "located" in § 1348 does not refer to every site where a national bank has a branch. In *Bougas*, this Court interpreted the term "located" in the national bank act's venue provision as permitting suits by and against national banks in state courts wherever the bank has a

branch office. 434 U.S. at 44; see 12 U.S.C. § 94 (1976).[8] But, in order to reach this conclusion, *Bougas* employed a purposive and context-specific analysis of § 94. A similar analysis here points to the opposite result with regard to § 1348: Whereas venue is concerned with convenience to litigants and therefore may be applied broadly to branch locations, diversity jurisdiction focuses upon prejudice against out-of-state defendants. See Wachovia Br. at 36-38. In short, it is clear in context that venue bears an expansive definition, just as it plainly is, was, and has been Congress's intent that the citizenship of national banks be more narrowly defined.

The venue tail of the term "locate" should not wag the "dog" of that term—its dominant meaning is more particular than the court of appeals understood it. The ordinary use of the term "located" should be applied to § 1348 and thus neither Wachovia nor Chase is "located" in every State where it has a branch office.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

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[8] At the time *Bougas* was decided, 12 U.S.C. § 94 provided that:

> Actions and proceedings against any association under the chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.

Respectfully submitted,

JULIE LEPRI
BRADLEY J. JOHNSON
JPMORGAN CHASE BANK, N.A.
LEGAL DEPARTMENT
10 South Dearborn
11th Floor
Chicago, IL 60603-2003
(312) 732-7354

CARTER G. PHILLIPS*
ERIC A. SHUMSKY
DAVID S. PETRON
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Amicus Curiae

* Counsel of Record

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